

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case Number: _____

UNITED STATES OF AMERICA,

Plaintiff,

v.

PAULA OLIVETTE PATRICE and
TO THE MAX TAX PROFESSIONALS, INC.,

Defendants.

COMPLAINT FOR PERMANENT INJUNCTION

The plaintiff, United States of America, alleges against defendants Paula Olivette Patrice and To the Max Tax Professionals, Inc., as follows:

1. The United States brings this complaint to enjoin Paula Olivette Patrice and To the Max Tax Professionals, Inc. (“To the Max”), and any entity through which they conduct business and all persons and entities in active concert or participation with them, from:

- (a) Preparing or filing federal tax returns, or advising, assisting or instructing anyone to prepare or file federal tax returns that claim the First-Time Homebuyer Credit unless ensuring that the taxpayer is entitled to that credit in accordance with 26 U.S.C. § 36;
- (b) Engaging in conduct subject to penalty under 26 U.S.C. § 6701, *i.e.*, preparing or assisting others in the preparation of any tax form or other document to be used in connection with a material matter arising under the internal revenue laws and which the defendants know will (if so used) result in the understatement of tax liability, including, but not limited to, preparing federal income tax returns that improperly include claims for the First-Time Homebuyer Credit;
- (c) Engaging in conduct subject to penalty under 26 U.S.C. § 6694; *i.e.*, including, but not limited to, willfully attempting to understate the tax liability of another person by preparing returns that improperly include claims for the First-Time Homebuyer Credit;

- (d) Engaging in conduct subject to penalty under 26 U.S.C. § 6695 by failing to provide the correct preparer identification number on the returns they prepare and failing to provide a completed copy of the return to the taxpayer; and
- (e) Engaging in similar conduct that substantially interferes with the proper administration and enforcement of the internal revenue laws.

Jurisdiction and Venue

2. This action has been requested by a delegate of the Secretary of the Treasury, and commenced at the direction of a delegate of the Attorney General of the United States, pursuant to the provisions of §§ 7402, 7407 and 7408 of the Internal Revenue Code, 26 U.S.C. (the “Code”).

3. Jurisdiction is conferred on this Court by 28 U.S.C. §§ 1340 and 1345, and Code §§ 7402(a), 7407 and 7408.

4. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b) because the defendants reside or conduct business in this district and because a substantial part of the actions giving rise to this suit took place in this district.

Defendants

5. Paula Olivette Patrice resides and conducts business in the Southern District of Florida in the Miami, Florida, area.

6. To the Max Tax Professionals, Inc., is located and conducts business in Miami Gardens, Florida. It was incorporated by Patrice with the State of Florida in March 2007. Patrice is its president, director and owner.

Defendants’ Activities

7. Paula Olivette Patrice is a tax return preparer as defined by Code § 7701(a)(36). She prepares other people’s federal tax returns for compensation.

8. Patrice is an experienced tax return preparer who has prepared returns since at least 2008.

9. To the Max Tax Professionals, Inc., is a tax return preparer as defined by Code § 7701(a)(36). It prepares other people's federal tax returns for compensation.

10. Around nine people work for To the Max as return preparers under Patrice's supervision. To the Max generally charged \$300 to \$400 to prepare an individual customer's return and file it electronically.

11. The defendants prepared and filed 1,571 federal income tax returns for tax year 2008. Of these returns, 363 claimed the First-Time Homebuyer Credit ("the credit").

12. The IRS reviewed 30 of the 363 returns and determined that none of them was entitled to the credit. None of the 30 taxpayers associated with the returns purchased a home that would qualify the taxpayer to claim the credit.

13. As a means to strengthen the real estate market and help the economy, Congress enacted the First-Time Homebuyer Credit in July 2008. The credit allowed first-time homebuyers a credit against their federal income tax of the lesser of ten percent of the home's purchase price or \$8,000 (the maximum credit).

14. The credit, which is codified at Code § 36, is claimed by completing and attaching to the income tax return an IRS Form 5405. Form 5405 clearly sets forth the requirements for credit eligibility. Form 5405 requires the preparer to list the purchased home's address and acquisition date.

15. To be eligible for the credit (as in effect for tax year 2008) a person must not have owned a home in the previous three years and must have actually purchased a home after April 8, 2008.

16. The defendants made no attempt to determine whether their customers were qualified to claim the credit. To the contrary, Patrice misrepresented the requirements for the credit to customers and failed to mention to customers that there must have been an actual home purchased.

17. As an example, Johnnie Barron went to To the Max to have her 2008 federal income tax return prepared. Barron is sixty-seven years old and earned a small amount of income from a children's daycare business she operated from her home. Barron told Patrice that she had not bought a home in 2008; nonetheless, Patrice advised her to claim the credit in case she bought one in 2009. Barron did not purchase a home and Patrice improperly included the claim for credit on Barron's 2008 return.

18. Another customer, Orlando Medina, purchased a new home in 2007, thereby making him ineligible to claim the credit. Medina told Patrice that he was in danger of losing his home to foreclosure. Patrice offered to prepare his 2008 federal income tax return and falsely told him that the credit was intended for people in his situation. The defendants thereafter prepared Medina's 2008 return and improperly claimed the credit. The property identified on the accompanying Form 5405 does not belong to Medina. Medina did not buy a new home, and continues to live in the house he bought in 2007.

19. Another customer, Jose Arrazola, provided Patrice with income and expense information, his social security number and address for preparing a 2008 federal income tax return. He had not purchased a home in 2008 and did not inform Patrice that he had. Arrazola had a disagreement with Patrice regarding the cost of her services and requested the return of his financial information. Patrice refused and instead electronically filed his 2008 return without his permission. The return the defendants prepared and filed for Arrazola erroneously claimed the

credit. Patrice did not furnish Arrazola with a completed copy of the return, as Patrice was required by law to do. At Arrazola's request, the IRS put a "freeze" on his account to prevent a tax refund attributable to the falsely claimed credit from being issued. Medina later filed a 2008 return prepared by a different preparer that did not claim the credit.

20. In one instance, the defendants listed the identical address for qualified property "purchased" on separate customers' tax returns, and in other instances listed nonexistent addresses for the property on the Form 5405.

21. The defendants are claiming the credit on returns they prepare with knowledge that the customers have not purchased a home during the applicable time period.

22. On each of the 30 returns reviewed by the IRS, the defendants claimed the maximum credit amount (\$8,000). In other words, the defendants claimed that each of these 30 customers purchased a home after April 8, 2008, that cost at least \$80,000.

23. Of the 30 returns reviewed by the IRS, each reported that the customer earned adjusted gross income of less than \$18,100, and 19 of the returns reported adjusted gross income of less than \$10,000. Four of the returns that claimed the credit reported adjusted gross income of \$0. In addition to the fact that customers informed them that they had not purchased a home, this absence of income should have alerted the defendants that the customers did not have sufficient income to purchase a home that would have entitled them to the credit claimed.

24. In addition to improperly claiming the First-Time Homebuyer Credit, Patrice and To the Max's return preparers listed incorrect social security numbers or preparer identification numbers for themselves on each of the 30 returns reviewed by the IRS.

25. Customer Medina's 2008 return, for example, shows the preparer as Ben Smith, a worker at To the Max. However, the social security number listed for Ben Smith actually

belongs to a different person, who lives in Thousand Oaks, California.

26. The defendants also listed the social security number of a person who died in 2005 as the preparer on tax year 2008 returns they prepared and filed for customers Marciano Riquelme and Parrakeyah Maffett.

COUNT I – Injunction under Code § 7407

27. Code § 7407 authorizes a court to enjoin a tax return preparer if, *inter alia*, the court finds that the return preparer has engaged in conduct subject to penalty under Code § 6694 and that injunctive relief is appropriate to prevent the recurrence of the conduct.

28. Code § 6694(b) imposes penalties on a tax return preparer who willfully attempts to understate the tax liability of another person or whose reckless or intentional disregard of rules and regulations results in the understatement of tax liability.

29. The defendants have continually and repeatedly engaged in conduct subject to penalty under Code § 6694(b) by preparing returns that they know contain erroneous claims for the First Time Homebuyer Credit.

30. Code § 6695(a) imposes penalties on a tax return preparer who fails to furnish a completed copy of the return to the taxpayer.

31. The defendants engaged in conduct subject to penalty under Code § 6695(a) by failing to furnish a completed copy of a return to a customer.

32. Code § 6695(c) imposes penalties on a tax return preparer who fails to furnish the preparer's correct identification number on a return.

33. The defendants have engaged in conduct subject to penalty under Code § 6695(c) by failing to provide the correct social security or other identification number on the returns they prepare.

34. Injunctive relief is appropriate to prevent this misconduct because, absent an injunction, the defendants are likely to continue preparing and filing false federal income tax returns that contain erroneous claims for the First-Time Homebuyer Credit and incorrect preparer identification numbers.

35. The defendants should be permanently enjoined under Code § 7407 from preparing or filing federal tax returns that claim the First-Time Homebuyer Credit unless the defendants ensure that the customer is entitled to the credit under Code § 36.

36. The defendants should be further permanently enjoined under Code § 7407 from preparing or filing federal tax returns that fail to show the correct preparer identification number.

37. The defendants should be further permanently enjoined under Code § 7407 from engaging in any other conduct subject to penalty under Code § 6694.

COUNT II – Injunction under Code § 7408

38. Code § 7408 authorizes courts to enjoin any person from engaging in conduct that is subject to penalty under Code § 6701 if injunctive relief is appropriate to prevent recurrence of that conduct.

39. Code § 6701(a) penalizes any person who aids or assists in the preparation of any portion of a federal tax return or other document knowing that it will be used in connection with any material matter arising under the internal revenue laws and knowing that if it is so used it would result in an understatement of another person's tax liability.

40. The defendants have prepared federal tax returns and IRS Forms 5405 for others knowing that the returns and documents improperly claim the First-Time Homebuyer Credit and

thereby understate the customers' correct federal tax liability. Their conduct is subject to penalty under Code § 6701.

41. Unless enjoined by the Court, the defendants are likely to continue to prepare tax returns that they know will result in the understatement of tax liability.

42. Accordingly, the defendants should be enjoined under Code § 7408 from engaging in conduct subject to penalty under Code § 6701.

COUNT III – Injunction under Code § 7402

43. Code § 7402 authorizes courts to issue injunctions “as may be necessary or appropriate for the enforcement of the internal revenue laws.” The remedies available to the United States under that statute “are in addition to and not exclusive of any and all other penalties.” Code § 7402(a).

44. The defendants, through the actions described above, have engaged in conduct that substantially interferes with the administration and enforcement of the internal revenue laws, and are likely to continue to engage in such conduct unless enjoined.

45. The defendants' conduct is causing irreparable injury to the United States and an injunction under Code § 7402(a) is necessary and appropriate. If the defendants are not enjoined from preparing tax returns that contain a false claim for the First-Time Homebuyer Credit the United States will suffer irreparable injury by erroneously providing tax refunds to persons not entitled to receive them and by taxpayers not reporting and paying the correct amount of taxes.

46. Unless the defendants are enjoined, the IRS will have to devote substantial time and resources to identify and locate their customers, and then examine those customers' tax returns and property records. Pursuing all individual customers may be impossible given the IRS's limited resources.

47. Enjoining the defendants is in the public interest because an injunction will stop their illegal conduct and the harm it causes the United States.

48. The Court should therefore order injunctive relief under Code § 7402(a).

WHEREFORE, the United States of America requests the following relief:

A. The Court find that the defendants have continually and repeatedly engaged in conduct subject to penalty under Code §§ 6694, 6695 and 6701, by willfully preparing false federal income tax returns that improperly claimed the First-Time Homebuyer Credit, failing to list the correct preparer identification number, and failing to provide a completed copy of a return they prepared to a taxpayer, and that an injunction under Code §§ 7407 and 7408 is appropriate to prohibit that conduct and any other conduct subject to penalty under Code §§ 6694, 6695 and 6701;

B. The Court, pursuant to Code §§ 7407, 7408 and 7402(a), enter a permanent injunction prohibiting the defendants from preparing or assisting in the preparation or filing of federal income tax returns or other related documents and forms for others that claim the First-Time Homebuyer Credit unless ensuring that the taxpayer is entitled to such credit in accordance with Code § 36;

C. The Court, pursuant to Code §§ 7407 and 7402(a), enter a permanent injunction prohibiting the defendants from preparing or assisting in the preparation or filing of federal tax returns that fail to show the correct preparer identification number;

D. The Court, pursuant to Code §§ 7407 and 7402(a), enter a permanent injunction prohibiting the defendants from preparing or assisting in the preparation or filing federal tax returns unless they provide a complete copy of the return to the taxpayer;

E. The Court find that the defendants have engaged in conduct that interferes with the

enforcement of the internal revenue laws, and that injunctive relief against them and anyone acting in concert with them is appropriate to prevent the recurrence of that conduct pursuant to the Court's inherent equity powers and Code § 7402(a);

F. The Court, pursuant to Code § 7402(a), enter an injunction requiring the defendants to contact by United States mail (or by e-mail, if a postal address is unknown) all persons for whom they prepared a federal tax return since January 1, 2009, that includes a claim for the First-Time Homebuyer Credit to inform them of the Court's findings in this matter and enclose a copy of the injunction entered against them, and to file with the Court within fifteen days of the date the permanent injunction is entered, a certification signed under penalty of perjury by Paula Olivette Patrice that they have done so;

G. The Court authorize the United States to engage in post-judgment discovery pursuant to the Federal Rules of Civil Procedure in order to monitor compliance with the Court's injunction; and

H. The Court grant the United States such other and further relief as the Court deems appropriate.

Dated: February 23, 2010.

JEFFREY H. SLOMAN
United States Attorney

/s/ Martin M. Shoemaker
MARTIN M. SHOEMAKER
Ga. # 001340
U.S. Dept. of Justice, Tax Division
P.O. Box 7238
Washington, D.C. 20044
(202) 514-6491 phone
(202) 514-6770 fax
martin.m.shoemaker@usdoj.gov